

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

**RULING: Defense Motion
For Appropriate Relief
Under RCM 1001(b)(4):
CDR Youssef Aboul-Enein**

14 August 2013

On 8 August 2013, in accordance with the procedures established in the Court's Ruling: Defense Motion for Appropriate Relief Under RCM 1001(b)(4) (AE 639), the Defense filed four objections to the testimony of Commander (CDR) Youssef Aboul-Enein (AE 647). The Government filed a response in opposition (AE 648). Each Defense objection is listed below followed by the Government response and the Court's ruling on the objection.

Objection 1. CDR Aboul-Enein's testimony that specifically mentioned the Little Rock recruiting station shooting and the Fort Hood shooting is irrelevant under both MRE 402 and MRE 403. The Defense requests that the Military Judge not consider that testimony in her capacity as the Sentencing Authority.

Government Position: CDR Aboul-Enein testified that al Qaeda seeks to elicit acts of violence against the United States in a leaderless environment. CDR Aboul-Enein testified that these are examples of attacks desired by al Qaeda. CDR Aboul-Enein's statement demonstrates examples and context of the affects of al Qaeda propaganda. CDR Aboul-Enein testified that the accused's misconduct provided a basis for al Qaeda propaganda, and that the accused's misconduct strengthened propaganda. Al Qaeda's propaganda is permissible aggravating evidence of the risk of damage or harm caused by the accused's misconduct. *See* Appellate Exhibit 639. Therefore, CDR Aboul-Enein's testimony of examples is context for proper aggravating evidence.

Ruling: CDR Aboul-Enein cited the Little Rock recruiting station shooting and the Fort Hood shooting as examples of why al Qaeda believes narrative is important to recruitment. The testimony is relevant. The Court takes judicial notice that both events took place prior to PFC Manning's offenses. The Court will consider this evidence solely for the purpose of serving as examples of why narrative is important to al Qaeda for recruitment. Considered as context evidence, the probative value of this testimony is not substantially outweighed by danger of unfair prejudice under MRE 403.

Objection 2. CDR Aboul-Enein's general testimony about the implicit threat to British and American officials from militant islamist organizations through public identification. The only matters appropriate for consideration are the threats that directly related to or resulted from PFC Manning's misconduct. The general testimony about the practice is barred by RCM 1001(b)(4).

Government Position: CDR Aboul-Enein's testimony regarding the Al Qaeda practice of threatening British and American officials serves as foundation and explanation for the types of threats employed by Al Qaeda. CDR Aboul-Enein testified that Al Qaeda threatened individuals named in WikiLeaks in information compromised by the accused. Therefore, CDR Aboul-Enein's testimony regarding threats against British and American officials should be considered as context for the threats Al Qaeda made in Inspire magazine against individuals revealed by the accused's misconduct.

Ruling: The testimony was that Inspire magazine used WikiLeaks images associated with named government individuals and also used WikiLeaks released cables associated with named government individuals. The ensuing risk of danger to these individuals relates directly to and results from PFC Manning's offenses. This testimony is admissible aggravation evidence under RCM 1001(b)(4).

Objection 3. The testimony beginning with the discussion of the "Manchester Document" and ending with how that historical lesson provides insight into how militant islamists may use the purported Significant Activity Reports (SIGACTs) from CIDNE-I/A. This testimony involved a level of speculation that made it inadmissible. ("Speculation" was the word used by CDR Aboul-Enein on both direct and cross on this particular topic.) There was no application of expertise to a given set of facts by the witness – only the telling of a fabricated narrative. MRE 702. The defense also objects to the evidence as violating RCM 1001(b)(4).

Objection 4. CDR Aboul-Enein's testimony regarding militant islamist organizations potential uses of SIGACTs. Again, "speculation" was the word used by CDR Aboul-Enein. By speculating, even an expert fails to meet the appropriate standards for his testimony under MRE 702. The evidence is also inadmissible under RCM 1001(b)(4).

Government Position with respect to Objections 3 and 4: CDR Aboul-Enein's testimony regarding the Manchester Document falls within his expertise in al Qaeda terrorism and his broad experience, which is detailed in Prosecution Exhibit 183. CDR Aboul-Enein was qualified as an expert in al Qaeda terrorism and its ideology. Terrorism involves the use of information to serve terrorist goals. CDR Aboul-Enein testified that compromised information in the Manchester Document was connected to al Qaeda operational activities. Additionally, CDR Aboul-Enein testified that the information contained in the Manchester Document was associated with al Qaeda tactics, to include tactics about resisting arrest. CDR Aboul-Enein further testified that al Qaeda's use of the information was discovered over ten years after al Qaeda first obtained the information and that Al Qaeda was still in possession of the information when it was discovered in 2000. This testimony serves as foundation and explanation of al Qaeda's use of military information compromised by the accused. CDR Aboul-Enein testified that it was his opinion that al Qaeda had an interest in the types of military information contained in the Manchester Document because al Qaeda had used it.

CDR Aboul-Enein testified that he was familiar with SIGACTs. CDR Aboul-Enein testified that SIGACTs contain military information, which is similar to information in the Manchester document. CDR Aboul-Enein testified that, in his opinion, al Qaeda is interested in SIGACT information. Al Qaeda's interest in SIGACT information is permissible aggravating

evidence of the risk of damage or harm caused by the accused's misconduct. *See* Appellate Exhibit 639.

CDR Aboul-Enein testified that al Qaeda is interested in military operational information and employed such information in its training manuals. CDR Aboul-Enein testified that al Qaeda, in Inspire magazine, requested that SIGACTs be "datamined." CDR Aboul-Enein was qualified as an expert in al Qaeda terrorism. Terrorism includes operational activities, to include violent attacks. Accordingly, CDR Aboul-Enein testified that, in his opinion, al Qaeda would use information compromised by the accused in its operations because al Qaeda had requested the information be "datamined" and al Qaeda had used similar information previously in the Manchester Document. CDR Aboul-Enein's opinion that al Qaeda would use SIGACT information is permissible aggravating evidence of the risk of damage or harm caused by the accused's misconduct. *See* Appellate Exhibit 639. Finally, CDR Aboul-Enein also testified that al Qaeda is a clandestine organization and that discovery of its uses of compromised information is not immediately discoverable.

Ruling – objections 3 and 4: The objected to testimony involves CDR Aboul-Enein's testimony about the type of military information al Qaeda is interested in and the capacity of al Qaeda to gather and analyze the English language SIGACTs released by WikiLeaks. CDR Aboul-Enein used the Manchester Document and Soviet manuals as examples of the type of military information al Qaeda is interested in and how they use the information to draft their own training manuals and procedures. CDR Aboul-Enein is familiar with SIGACTs and, on direct examination, testified how language is not a barrier to translation. During this testimony, CDR Aboul-Enein used the word "speculate" when testifying about examples of how al Qaeda could use information from the SIGACTs to analyze and deduce patterns of behavior of U.S. Forces, develop counter measures and ambushes, and gain understanding of how U.S. forces operate to emulate the techniques. These examples of the type of information in the SIGACTs that al Qaeda would be interested in and how al Qaeda has capacity to gather and analyze such information is within the scope of CDR Aboul-Enein's expertise. The testimony is based on sufficient facts or data and is the product of reliable principles and methods. CDR Aboul-Enein reliably applied the principles and methods to the facts of this case. This testimony is admissible expert testimony under MRE 702. The fact that CDR Aboul-Enein used the word "speculate" when giving an example of al Qaeda's capacity to collect and analyze the released SIGACTs, does not remove this testimony from the scope of CDR Aboul-Enein's expertise. Evidence of al Qaeda interest in acquiring U.S. tactics, techniques, and procedures and evidence of al Qaeda's capacity to collect and analyze the released SIGACTs is evidence of risk to the national security of the United States that is directly related to and resulting from PFC Manning's offenses. It is admissible aggravation evidence under RCM 1001(b)(4). Evidence elicited by the Defense that CDR Aboul-Enein is not aware of any reports to date that al Qaeda has exercised its capacity to acquire and analyze the released SIGACTs goes to the weight of his testimony.

MRE 403 analysis.

The probative value of those portions of the testimony and evidence ruled admissible as aggravation evidence under RCM 1001(b)(4) is not substantially outweighed by the danger of unfair prejudice under MRE 403. The Court has limited the scope of the testimony and evidence

to periods directly related to or resulting from PFC Manning's offenses and context evidence with respect to objection 1.

So **ORDERED** this 14th day of August 2013.

A handwritten signature in black ink, appearing to read "D. R. Lind", written in a cursive style.

DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit